



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office

November 17, 2014

1:30 p.m.

Present: Linda Krieger, Raymund Liongson, Wally Fukunaga, and Kim Coco Iwamoto, Commissioners; Livia Wang, Marcus Kawatachi, and Bill Hoshijo, Staff; Dwight Takamine, Director of Labor and Industrial Relations; Francine Wai, Executive Director, Disability and Communication Access Board. Dan Purcell, a member of the public was also in attendance.

Commissioner Artemio Baxa, excused.

Chair Linda Krieger called the meeting to order.

Approval of Minutes

The minutes of the October 27, 2014, meeting were approved, with a substantive correction on page 4. . (m/s/p Iwamoto/Fukunaga; all) .

In the discussion of Legislation on page 4, the sixth paragraph was corrected to read:

Commissioner Iwamoto made a motion that the Commission direct the ED to not respond to the request, and, instead, proactively communicate with the new administration that the Executive Director is willing to provide any information that it might request. The motion did not pass. (Iwamoto/Fukunaga; 1-3).

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi's presented an FY 2015 HCRC Mediation Program Year-to-Date Summar, noting that one additional case had been successfully mediated since the October report..

Summary & Details (7/1/14 through 11/17/14)

Referrals:	11
Dispositions:	15
Settlements:	7
Non-agreements:	8
Settlement Rate:	46.7 %
Employment cases settled:	7
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	5
State-only settlements:	2

Primary Bases for Complaints Settled in Mediation

Sex (3 pregnancy & 1 SH)	4
Race	2
Ancestry/National Origin	1

Dispositions by Mediation Center

Mediation Center of the Pacific	2/7	(settlement rate 28.6 %)
Kauai Economic Opportunity, Inc.	2/3	(settlement rate 66.7%)
West Hawaii Mediation Center	1/2	(settlement rate 50 %)
Private Mediators	2/2	(settlement rate 100 %)
Ku'ikahi Mediation Services (Hilo)	0/1	(settlement rate 0 %)
Mediation Services of Maui	0/0	(settlement rate 0%)
OVERALL	7/15	(settlement rate 46.7%)

DED Kawatachi presented a data and production report showing caseload data through November 17, 2014, noting that only three weeks had passed since the October report.

As of November 17, 2014, the report showed 376 open cases, a decrease of 2 cases from the number reported as of October 27, 2014. Of those, 3 (0.8%) were filed in 2009, 12 (3.2%) filed in 2010, 23 (6.1%) filed in 2011, 52 (13.8%) in 2012, 110 (29.3%) in 2013, and 176 (46.8%) in 2014.

The report also showed a breakdown of the status of the open cases by investigation stage.

	2009	2010	2011	2012	2013	2014	Total
Housing Cases	0	0	1	7	2	12	22
Intake Stage	0	0	2	0	61	140	203
Mediation	0	0	0	1	7	10	18
Pending Assignment	0	8	16	39	29	6	98
Active Investigation	3	4	4	5	11	8	35
TOTAL	3	12	23	52	110	176	376

It was reported that: 23.1% of all investigation cases were 2 years old or older (from date of filing); 9.8% were over 18 months but less than 2 years old; 13.8 % were over 12 months but less than 18 months old; 23.4% were over 6 months but less than 12 months old, and 29.8% were 6 months old or less.

DED Kawatachi reported that 2 administrative subpoenas were issued, requiring respondents to submit their written response to a complaint. Chair Krieger asked if, given the time and resources expended, the enforcement section should consider sending the subpoena sooner. DED Kawatachi described the process and conditions preceding the issuance of a subpoena, usually a including a telephone call and a letter

requesting the response, with a warning that a subpoena would follow. He noted that most reticent respondents respond without resort to the use of the subpoena.

Chair Krieger asked for a breakdown of the reasons for the drop between the number of pre-complaint questionnaires (PCQs) received and, after intake decision, the number of complaints filed. DED Kawatachi responded that the largest number of PCQs received that did not result in complaint filings were non-jurisdictional. He said that he would check on whether the numbers could be queried from the database going forward.

Executive Director (ED) Bill Hoshijo introduced Director of Labor and Industrial Relations Dwight Takamine.

Director Takamine thanked the Commissioners for the opportunity to address them, noting that it would likely be his last chance to join them, with the change of administration coming at the beginning of December. He thanked the Commissioners for their service ... uncompensated voluntary service. He commented that the work of the HCRC was important, a continuation of a rich civil rights history in Hawai'i.

A member of the public, Dan Purcell, was recognized by Chair Krieger. He addressed a question to Director Takamine, asking him to comment on removing the HCRC from the DLIR, due to an inherent conflict. Director Takamine responded that he wanted to limit his comments to thanking the Commissioners for their service.

ED Hoshijo reported that the HCRC was completing the selection process to fill three investigator positions, two permanent positions and one temporary position.

Chief Counsel's Report

Chief Counsel (CC) Livia Wang reported that Commission's October 28, 2014, decision and order in the *Elento* case was posted on the HCRC website.

Commissioner Kim Coco Iwamoto asked whether, after the time to appeal expires, the HCRC should issue a press release regarding the declaratory relief decision.

Francine Wai, Executive Director of the Disability and Communication Access Board (DCAB), commented that DCAB had received a request for the issuance of a fact sheet explaining the state law, HRS § 368-1.5 and HCRC jurisdiction. She said that DCAB would tell people that they can go to the HCRC to file complaints against public educational institutions, but that in the absence of rules, it might be confusing to offer more than that basic information.

Commissioner Iwamoto said that in light of the statute of limitations for timely filing of complaints with the HCRC, that she thought a press release might be needed. She also wanted to be consistent with past practice announcing final decisions of the Commission.

CC Wang noted that the Commission, in its adjudication role, did not issue press releases, and that was more appropriately within the role of the Executive Director and the enforcement section.

ED Hoshijo reported that the first priority on the enforcement side was complying with the decision and order by effecting the filing of the complaints that were initially considered non-jurisdictional, but are now clearly within the HCRC's jurisdiction pursuant to the declaratory relief granted.

Chair Krieger commented that the Commission should consider promulgating rules to implement its decision, parsing out the HRS § 368-1.5 state version of Section 504 of the Rehabilitation Act, from IDEA and Title II of the ADA claims.

Dan Purcell, a member of the public, suggested that there might be a need to convene a task force to get public input. Chair Krieger noted that the rulemaking process required public input.

Commenting on the Commission decision not to consider the petition for declaratory relief filed by Petitioner TD Food Group, Chair Krieger suggested that it might be appropriate to engage in rulemaking on HRS Chapter 489 public accommodations law at the same time as rules promulgation for HRS § 368-1.5.

In the *Bate* litigation, CC Wang reported on the status of the HCRC motion to dismiss, heard on October 31, 2014. The appeal and request for jury trial filed by respondents was stayed, pending the Commission's final decision on attorney's fees and costs.

Legislation

There was nothing new to report on legislation.

Old Business

ED Hoshijo said there was nothing new to report on *Cervelli v. Aloha Bed & Breakfast*, which remained pending before the Intermediate Court of Appeals.

CC Wang reported on the HCRC's annual public training program, held on October 30, 2014, at the Blaisdell Exhibition Hall Pikake Room. She discussed the audience evaluations, noting that the attendance was less than in the past, but that evaluations were very good.

CC Wang acknowledged the contributions of several key people: Cathy Simmons, Marcus Kawatachi, Tracey Wiltgen, Sara Wang, Cathy Kapua, Glory Gervacio, Rogelio Colon, Jessie Faige, and Sara Banks.

Chair Krieger thanked CC Wang, DED Kawatachi, and moderator Tracey Wiltgen from the Mediation Center of the Pacific.

New Business

Chair Krieger suggested that the Commission should think about problems that transgender individuals face with health insurance coverage, with exclusions of treatments that are covered for non-transgender individuals. She noted that state law protects against discrimination based on gender identity or expression in employment, public accommodations, and housing, but not in state health insurance law, and suggested that the HCRC should look at other states that have enacted such protections.

The Commissioners and staff agreed that the issue should be discussed further, including whether the Commission should do something and what it should do, starting with research on other states.

Member of the public Dan Purcell noted that the Pre-Paid Health Council does not even keep minutes. He also raised two specific concerns: he is concerned that the Commission only address legitimate subjects in closed session; and, the HCRC should have a policy about public access to the building

without showing an ID, because that has a chilling effect on people coming to the HCRC.

On a new matter, Commissioner Wally Fukunaga asked whether the Chair's concern over efficiency needed to be addressed.

Chair Krieger said that backlog is a concern, and that there was no certainty that lost capacity would be restored, so the HCRC has to consider ways to streamline the process.

Commissioner Raymund Liongson expressed concern over what would happen under the new Governor and new administration.

ED Hoshijo suggested that Governor-elect Ige had a strong interest in efficiency. Chair Krieger said she hopes that the new administration might consider technologies that will efficiency dividends, citing litigation case management software as an example.

Announcements

ED Hoshijo announced that on Thursday, November 20, 2014, Eric K. Yamamoto, the University of Hawai'i William S. Richardson School of Law *Fred T. Korematsu Professor of Law and Social Justice*, in collaboration with law student Scholar Advocates, would give a multi-media presentation on "*United States and South Korea Responsibility for the 'Peacetime' Jeju April 3rd Grand Massacre – Revitalizing Present-Day Social Healing Through Justice.*"

Next Meeting

The December meeting of the Commission was scheduled, for December 15, 2014, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment